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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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CC Docket No. 94-1

In the Matter of)
)
Price Cap Performance Review)
for Local Exchange Carriers;)
Treatment of Video Dialtone Services)
Under Price Cap Regulation)

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COMMENTS

Comcast Cable Communications, Inc. and Cox Enterprises, Inc., by their attorneys,
hereby submit their comments in the Commission's Third Further Notice of Proposed
Rulemaking in the above-referenced docket.^{1/}

I. INTRODUCTION

In the *Second Report and Order*, the Commission required LECs with more than *de minimis* video dialtone costs to create a separate video dialtone price cap basket.^{2/} In the *Third Further Notice*, the Commission is seeking to resolve two issues left open in the *Second Report and Order*: (1) what costs should be included in the video dialtone basket? and (2) when should a LEC's video dialtone costs be considered *de minimis*?

Before deciding what costs should be placed in the video dialtone price cap basket, the Commission must prescribe a method for allocating common costs between video and

^{1/} Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation, Second Report and Order and Third Further Notice of Proposed Rulemaking, CC Docket No. 94-1, FCC 95-394 (rel. September 21, 1995) ("*Second Report and Order*" or "*Third Further Notice*").

^{2/} *Second Report and Order* at ¶ 35.

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telephone services. The Commission has taken preliminary steps to separate video and telephone costs, such as requiring subsidiary accounting records and a separate price cap basket, but it has continued to avoid the critical issue of common cost allocation. The creation of a separate video dialtone price cap basket will be a wasted effort if LECs are permitted to decide unilaterally what portion of common costs, if any, are allocated to video dialtone in the first place.

The Commission also must ensure that this separation of telephone and video costs takes place before the jurisdictional separations process. If the separation of video and telephone costs occurs after the jurisdictional separations process, a substantial portion of video dialtone costs will be assigned to the intrastate jurisdiction pursuant to Part 36. This places an unnecessary and unfair burden on state regulators to determine what portion of intrastate costs are generated by video dialtone--even though video dialtone, as reflected in LEC proposals, is predominantly an interstate service.

Finally, having recognized that a separate basket is needed to mitigate the possibility of cross-subsidization, there is no basis for the Commission to establish a *de minimis* exception to the video dialtone price cap basket requirement. Accordingly, the Commission should reconsider its decision not to require LECs to create a separate basket when video dialtone costs are *de minimis*. If the Commission nonetheless maintains the *de minimis* exception, the threshold level of costs must be based on total video dialtone investment, rather than just dedicated investment. Due to the integrated nature of video dialtone facilities, a threshold based solely on dedicated video dialtone investment would understate

substantially the potential for cross-subsidization of video dialtone by regulated telephone services.

II. VIDEO DIALTONE COSTS MUST BE SEPARATED FROM TELEPHONE COSTS AND ALLOCATED TO THE VIDEO DIALTONE PRICE CAP BASKET BEFORE THE JURISDICTIONAL SEPARATIONS PROCESS OCCURS.

In the *Third Further Notice*, the Commission raises the question of what costs to include in the video dialtone basket. The *Third Further Notice* states that it is necessary to "specify a method or factor to be used in Part 69 for allocating video dialtone costs to the video dialtone basket."^{3/} This can be done, the Commission asserts, by "using the approach in the new services test applied in the tariff review process" or by adopting a "fixed cost allocation factor." *Id.*

These proposals are fundamentally flawed because neither addresses the critical issue of how to allocate common costs between video and telephone services and separate video costs from telephone costs before the jurisdictional separations process. Unfortunately, while the Commission has required carriers to report video dialtone costs,^{4/} it has not prescribed a methodology for allocating common costs between video and telephone services. Until the Commission prescribes a methodology that separates video and telephone costs before the Part 36 jurisdictional separations process, a substantial portion of LEC network

^{3/} *Third Further Notice* at ¶ 41.

^{4/} *Reporting Requirements on Video Dialtone Costs and Jurisdictional Separations for Local Exchange Carriers Offering Video Dialtone Services*, Memorandum Opinion and Order, DA 95-2036 (rel. September 29, 1995) ("*Reporting Order*").

rebuild costs will be allocated to intrastate jurisdiction under existing Part 36 procedures. As described below, as much as 75 percent of network rebuild costs may be assigned to the states under the existing rules. 47 C.F.R. § 36.154(c). State regulators then will face the difficult task of identifying the portion of costs attributable to video dialtone and ensuring that these costs are not considered in telephone ratemaking decisions..

The proposal to use the allocation of common costs used by the carrier for determining video dialtone rates as the basis for allocating costs to the video dialtone basket is not objectionable once the Commission has rules in place to allocate common costs and separate video and telephone costs before the jurisdictional separations process. To date, however, the Commission has yet to prescribe, or even address, the proper allocation of common costs under the new services test and there is no prescribed mechanism in place to separate video costs from telephone costs so they do not fall on intrastate ratepayers. Consequently, use of the new services test alone at the present time would give LECs virtual free reign to allocate a minimal level of costs to video dialtone.

As for the Commission's proposal to use a fixed cost allocation factor, the success of such a proposal is dependent on the costs to which the allocation factor is applied to. This critical fact is missing from the proposal in the *Third Further Notice*, thereby making it difficult to determine how effective this approach would be if adopted.

The Commission's proposal plainly would be unsuccessful in preventing cross-subsidization if the allocation factor is applied to existing Part 69 categories. To date, the Commission has allowed LECs to implement video dialtone rate structures in which video dialtone costs flow through the accounting process into existing Part 69 categories that were

not designed to accommodate video costs.^{5/} Even if the Commission amends Part 69 to allocate some portion of these costs to the newly created video dialtone basket, this allocation would occur after the jurisdictional separations process and therefore would do nothing to ease the burden on state regulators and prevent intrastate telephone ratepayers from potentially being forced to bear the burden of interstate video dialtone costs.

To avoid this result, the Commission must amend its Part 64 cost allocation rules to include procedures for separating video costs from telephone costs. For example, Cox previously has proposed permitting LECs to assign up to 50 percent of network rebuild costs to regulated telephone services, with the video and telephone portions then subjected to jurisdictional separations under the Part 36 rules.^{6/} Under this proposal, the Commission can ensure that video dialtone costs do not get assigned to the intrastate jurisdiction and can avoid requiring each state commission to undertake a separate analysis of LEC costs.

If the Commission does not amend Part 64, it must prescribe some other method for separating video and telephone costs. Over one year ago, the Commission stated that it would commence a proceeding to address "the implications for the jurisdictional separations process of the introduction of new technologies."^{7/} This promised proceeding is desperately needed because the existing Part 36 rules do not address the proper jurisdictional separation

^{5/} *Bell Atlantic Telephone Cos., Petition for Expedited Waiver of Part 69*, Order, DA 95-1282 at ¶ 61 (rel. June 9, 1995) (assigning costs to existing Part 69 categories).

^{6/} *See* Letter from Laura H. Phillips, Esq. to William F. Caton, CC Docket 87-266 (July 12, 1995).

^{7/} *Telephone Company-Cable Television Cross-Ownership Rules*, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244, 333 (1994).

of broadband cable and wire facilities (C&WF). Instead, LECs presumably have been allocating network rebuild costs between Category 1 (exchange line) and Category 2 (wideband), neither of which was intended to include the type of broadband facilities necessary to provide video dialtone.

Until new rules are adopted, Section 36.153(a)(1) requires allocation between C&WF categories based on "conductor cross section." 47 C.F.R. § 36.153(a)(1). Arguably this requires an allocation based on bandwidth. The Commission, however, has yet to specify how this provision should be applied in the context of video dialtone and only recently did it even require carriers to explain how they intend to apply the rule.^{8/} This failure to prescribe procedures for allocating costs between Category 1 and Category 2 has left this decision entirely to the discretion of individual LECs, who have a tremendous incentive to allocate C&WF costs to Category 1 because 75 percent of those costs are assigned to the intrastate jurisdiction. 47 C.F.R. § 36.154(c). To limit this potential for misallocation of costs, the Commission must prescribe how costs are allocated between Category 1 and Category 2 cable and wire facilities.

III. A *DE MINIMIS* THRESHOLD BASED ON DEDICATED VIDEO DIALTONE INVESTMENT WOULD VASTLY UNDERSTATE THE IMPACT OF VIDEO DIALTONE.

LECs are required to keep records and file reports showing the amount of video dialtone costs that have been incurred, but the *Second Report and Order* requires these costs

^{8/} *Reporting Order* at ¶ 20.

to be included in a separate video dialtone basket only if they exceed a *de minimis* level.^{9/} In the *Third Further Notice*, the Commission seeks comment on how to define when video dialtone costs are *de minimis*.

As an initial matter, there is no basis for this *de minimis* exception. Having recognized that a separate price cap basket is necessary to minimize cross-subsidization, providing an exception to the separate basket requirement is tantamount to endorsing LEC cross-subsidization. Moreover, any characterization of LEC video dialtone investment as *de minimis* is misleading. Even if a LEC's video dialtone costs are small in proportion to its telephony costs and the effect of cross-subsidization on individual telephone ratepayers is minimal, the effect on a cable operator forced to compete with a subsidized video dialtone facility would be substantial. Because the Commission readily can identify from the required reports the costs incurred by a LEC for video dialtone, there is no sound reason not to require these costs to be separated from telephone costs as they are incurred.

If the Commission persists in establishing a *de minimis* threshold before the separate price cap basket requirement is triggered, there is no reason to base the threshold only on the LEC's dedicated video dialtone investment as suggested by the Commission.^{10/} Use of dedicated investment ignores the fact that the majority of video dialtone costs are common costs. Because of the integrated nature of the facilities, the impact of video dialtone may be substantial even when the amount of dedicated video dialtone costs is small. Therefore, the

^{9/} *Second Report and Order* at ¶ 35.

^{10/} *Third Further Notice* at ¶ 40.

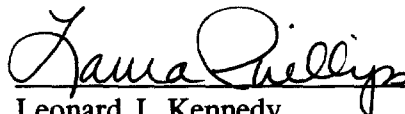
de minimis threshold must be based on total video dialtone costs, including a reasonable portion of shared costs.

IV. CONCLUSION

The effectiveness of the newly created video dialtone price cap basket is tied directly to the procedures used for allocating common costs between video and telephone services. This separation of video and telephone costs must be prescribed by the Commission and it must take place before the jurisdictional separations process. If not, intrastate telephone ratepayers unfairly will be forced to bear the burden of LEC video dialtone investments. Furthermore, there is no basis for any exception to the separate basket requirement. If a *de minimis* exception is retained, the threshold must be based on total video dialtone costs, not dedicated video dialtone costs.

Respectfully submitted,

COMCAST CABLE COMMUNICATIONS, INC.
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A handwritten signature in dark ink, appearing to read "Laura Phillips", is written over the printed name of Leonard J. Kennedy.

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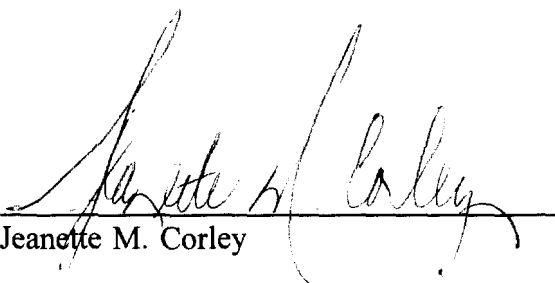
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CERTIFICATE OF SERVICE

I, Jeanette M. Corley, do hereby certify that on this 27th day of October, 1995, copies of the foregoing "Comments" were delivered by hand to the following parties:

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